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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 ABDU SALEH, Beneficiary of a Visa)
16 Petition Filed By TEHETENA DAGNA) Case No. 2:13-cv-0586-GMN (GWF)
17 TEKLEWOLD,)
18 Plaintiff,)
19 v.)
20 ERIC H. HOLDER, JR., Attorney)
21 General of the United States,)
22 Defendant.)

23 Defendant Eric H. Holder, Jr., Attorney General of the United States (“Defendant”)

24 hereby submits a Scheduling Conference Report and Discovery Plan, under Rule 26(f) of the
25 Federal Rules of Civil Procedure and Local Rule 26-1.¹ As discussed more fully below, this case

26
27 ¹ Undersigned counsel for Defendant attempted to meet and confer with Dan Winder,
28 Plaintiff Abdu Saleh’s counsel, on multiple occasions in July, August, September, October, and
November by telephoning his office and leaving telephone messages, and by sending follow-up

1 arises under the Administrative Procedures Act, 5 U.S.C. § 701. Accordingly, the plan does not
 2 set deadlines within those specified in Local Rule 26-1(e), and special scheduling review is
 3 requested.

4 **(1) Nature of the Case and Summary of the Issues.**

5 This is an immigration case where Plaintiff Abdu Saleh (“Plaintiff”) challenges the Board
 6 of Immigration Appeals’s (“Board’s”) decision affirming in part the United States Citizenship
 7 and Immigration Services’s (“USCIS’s”) denial of the I-130 alien relative visa petition filed on
 8 his behalf by his United States citizen wife (“I-130 petition”).

9
 10 A United States citizen who is married to an alien spouse may file an I-130 petition to
 11 classify the spouse as an immediate relative. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i) & 1154. The
 12 petitioner bears the burden of establishing eligibility. *See* 8 U.S.C.A. § 1361. If USCIS
 13 approves the petition, USCIS may consider the alien’s application to adjust his or her
 14 immigration status, which, if approved, will grant the alien the status of lawful permanent
 15 resident. *See* 8 U.S.C. § 1255(a). If USCIS denies the I-130 petition, the petitioner may appeal
 16 to the Board. *See* 8 C.F.R. § 1003.1(b)(5). The Board’s decision is the final agency action
 17 subject to judicial review.

18
 19 Here, the Board affirmed USCIS’s denial of the I-130 for one reason: the record evidence
 20 did not establish that the marriage between Plaintiff and his wife was *bona fide*. *See* Certified
 21 Administrative Record at 3-4. The principle issue in this case is whether the Certified
 22

23
 24 email messages. On October 17, 2013, undersigned counsel also emailed Mr. Winder a copy of
 25 the instant 26(f) report and proposed it as a joint status report. On October 29, 2013, Mr. Winder
 26 telephoned the undersigned, stating he was returning the undersigned’s telephone calls. He
 27 informed the undersigned that he was unable to confer at that time because he did not have his
 28 case file and had not reviewed the proposed joint status report. He informed the undersigned that
 he would contact the undersigned by November 1, 2013 in order to meet and confer about the
 26(f) report, due on November 5, 2013. As of the time of this filing, he has not contacted the
 undersigned.

1 Administrative Record supports the Board's decision denying the I-130 petition for this reason.
2 Plaintiff appears to contend that because the Certified Administrative Record does not support
3 the Board's decision, the agency's decision is arbitrary and capricious. *See* 5 U.S.C.
4 § 706(2)(A). Defendant contends that the Certified Administrative Record supports the Board's
5 decision and the Court must defer to the agency's reasonable interpretation of its governing
6 regulations. *See Auer v. Robbins*, 519 U.S. 452, 461-62 (1997).

7 **(2) Issues to be Decided by Pretrial Motion.**

8 Defendant believes that the Court can decide the entire case based on cross-motions for
9 summary judgment and that a trial in this matter is unnecessary. Defendant's proposed briefing
10 schedule is as follows:

12 Cross-motions for summary judgment due on or before: **12/10/13**
13 Cross-opposition briefs due on or before: **1/10/14**
14 Cross-reply briefs (if any) due on or before: **1/24/14**
15 Motion hearing date: **2/7/14**

17 **(3) Discovery Plan.**

18 Defendant believes that discovery in this case is limited to the Certified Administrative
19 Record. Accordingly, Defendant asserts that this case is exempt from initial disclosures under
20 Federal Rule of Civil Procedure 26(a)(1)(B)(i). Defendant provided Plaintiff with the Certified
21 Administrative Record on September 5, 2013. Further, to prevent unauthorized access to
22 personal, financial and immigration records, the parties stipulated to Defendant filing the
23 Certified Administrative Record with the Court under seal, which Defendant did on September 4,
24 2013.

26 **(4) Settlement Efforts and Alternate Dispute Resolution.**

27 Settlement discussions between the parties are ongoing. The parties, however, agree that
28 this case is not suitable for Alternative Dispute Resolution.

1 **(5) Reference of the Case to Magistrate, Independent Experts, or Master.**

2 Defendant believes that the case should not proceed before the Magistrate Judge.

3 Defendant also believes that this case does not require any independent experts or masters.

4 **(6) Manual on Complex Litigation.**

5 Defendant believes that this is not a complex case and does not require reference to the
6 procedures set forth in the Manual on Complex Litigation.

7 **(7) Further Amendment of Pleadings and Addition of Parties.**

8 Defendant believes that there will be no amendment to the pleadings or addition of
9 parties.

11 **(8) Other Issues.**

12 Defendant believes that this case presents no unusual legal issues. Further, Defendant
13 does not have any proposals regarding severance, bifurcation or other ordering of proof.

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27 //

28 //

1 Dated: November 6, 2013

Respectfully submitted,

2 STUART F. DELERY
3 Assistant Attorney General
4 Civil Division

5 DAVID J. KLINE
6 Director
7 Office of Immigration Litigation
8 District Court Section

9 JEFFREY S. ROBINS
10 Assistant Director
11 Office of Immigration Litigation
12 District Court Section

13 By: *s/ Sarah Maloney*
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25 IT IS SO ORDERED:
26

27 Date: November 18, 2013

28 
HON. GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

Case No. 2:13-cv-0586-GMN (GWF)

I certify that on November 6, 2013, I caused the foregoing Joint 26(f) Report to be electronically filed with the Clerk of United States District Court, District of Nevada using the appellate CM/ECF system.

I also certify that opposing counsel, identified below, is a registered CM/ECF user, and service should be accomplished by the CM/ECF system.

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By: *Sarah Malone*
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